

## Internal Revenue Service

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Washington, DC 20224

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### Legend

State =

Plan =

Statute =

Dear :

This is in reply to your letter dated August 25, 2008, requesting a ruling on behalf of State concerning whether certain disability retirement payments made under Plan pursuant to Statute are excludable from the gross income of recipients under section 104(a)(1) of the Internal Revenue Code (the Code).

The Plan was established by State for the purpose of providing retirement allowances and other benefits for employees of counties, cities, towns and other eligible employers participating in Plan.

Subsection (a) of Statute provides that any member who meets certain age and service criteria may receive an unreduced service retirement benefit. Subsection (b) of Statute provides formulas for calculating service retirement benefits using the member's age, average final compensation and years of creditable service.

Subsection (c) of Statute provides for Disability Retirement Benefits and states that a member who has had five or more years of creditable service may apply for a disability

retirement benefit, subject to certification by the medical board that the member is mentally or physically incapacitated for the further performance of duty, that such incapacity was incurred at the time of active employment and has been continuous thereafter, that such incapacity is likely to be permanent, and that the member should be retired. Subsection (c) of Statute further provides that if the member is a law enforcement officer, a fireman, or rescue squad worker who has one year or more of creditable service and becomes incapacitated for duty as the natural and proximate result of an accident occurring while in the actual performance of duty, and meets all other requirements for disability retirement benefits, that member may be retired on a disability retirement allowance.

Subsection (d) of Statute sets out the method for calculating the disability retirement benefit authorized under subsection (c) of Statute. For members retiring on or after July 1, 1982, the disability retirement benefit is equal to the service retirement allowance if the member had qualified for an unreduced service retirement benefit; otherwise the disability retirement benefit is equal to the service retirement benefit calculated on the member's average final compensation prior to his disability retirement and the creditable service he would have had had he continued in service until the earliest date on which he would have qualified for an unreduced service retirement allowance.

Section 61(a) of the Code provides that, except as otherwise provided by law, gross income means all income from whatever source derived, including compensation for services.

Section 104(a)(1) of the Code provides that gross income does not include amounts received under workmen's compensation acts as compensation for personal injuries or sickness.

Section 1.104-1(b) of the Income Tax Regulations states that section 104(a)(1) of the Code excludes from gross income amounts received by an employee under a workmen's compensation act or under a statute in the nature of a workmen's compensation act that provides compensation to the employee for personal injury or sickness incurred in the course of employment. Section 1.104-1(b) of the regulations also states that this exclusion does not apply to the amount received either to the extent that it is determined by reference to the employee's age or length of service, or the employee's prior contributions, even though the employee's retirement is occasioned by an occupational injury or sickness, or to the extent that it is in excess of the amount provided in the applicable workmen's compensation act or acts.

The first part of subsection (c) of Statute provides a disability retirement benefit to a member who has completed at least five years of service and who becomes mentally or physically incapacitated for further performance of duty while in active employment. This provision does not limit compensation to the member for personal injury or

sickness incurred in the course of employment and, therefore, is not a statute in the nature of a workmen's compensation act.

Although the second part of subsection (c) of Statute provides a disability retirement benefit to a member who has completed at least one year of service and becomes incapacitated for duty as the result of an accident occurring while in the actual performance of duty, the amounts received under subsection (c) are determined under subsection (d) of Statute.

Under subsection (d) of Statute, the disability retirement benefit is equal to a percentage of the final average compensation multiplied by the number of years of creditable service the member would have had if he had continued in service until the earliest date on which he would have qualified for an unreduced service retirement benefit under Plan. In addition, a member who, at the time of his disability retirement, is eligible for an unreduced service retirement benefit based on age and years of creditable service will receive that service retirement benefit in lieu of a disability retirement benefit. We conclude that disability retirement benefits provided under subsection (d) of Statute are determined with reference to the employee's age and length of service.

Based on the representations made and authorities cited above, Statute is not a statute in the nature of a workmen's compensation act and amounts paid under Statute are not excludable from members' gross income under section 104(a)(1) of the Code.

No opinion is expressed as to the federal tax consequences of the transaction under any other section of the Code or Statute other than those specifically stated above.

This ruling is directed only to the Taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

Harry Beker, Chief  
Health and Welfare Branch  
Office of Division Counsel/Associate Chief Counsel  
(Tax Exempt & Government Entities)